Supreme Court, U.S.
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MICHAEL RODAK, JR., CLERK

80-1255

CASE NO._____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1980

DANIEL L. FIRESTONE,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES
SUPREME COURT

LEVI ENGLAND
ENGLAND & DONATO
6100 Griffin Road
Suite 208
Davie, Florida
(305) 792-1998

JIM SMITH
Attorney General
Tallahassee, Florida 32301

MAX RUDMANN
Assistant Attorney General
111 Georgia Avenue
Room 204
West Palm Beach, Florida 33401
(305) 837-5037

QUESTIONS FOR REVIEW

1. Are the long standing principles of comity, judicial expendiency and narrow scope of inquiry as defined by the common law prodgeny of Article IV § 2, cl. 2 of the United States Constitution [the extradition clause] consistent and compatible with the basic and fundamental right of and need for due process, both substantive and procedural, as outlined by the fourteenth amendment to the United States Constitution, where the former precludes a timely and meaningful hearing in the face of obivious and blatant prosecutorial bad faith and abuse of color of law.

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OPINIONS OF THE COURTS BELOW

The opinion and order of the Circuit Court in and for the Seventeenth Judicial Circuit of Florida was to deny Petitioner's, Daniel L. Firestone, Writ of Habeas Corpus and granted Ohio's request for extradition. (appendix A) The Fourth District Court of Appeal at West Palm Beach, Florida affirmed per curiam the Circuit Court's order. (appendix B) Rehearing was denied (appendix C) as was Petitioner's Motion for a Stay of Mandate pending consideration of this Writ of Certiorari at the Florida State District Court of Appeal level. (appendix D)

JURISDICTION

Jurisdiction is invoked in accordance with the provisions of 28 U.S.C. 1257.

> Final judgments or decrees rendered by the highest Court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.
>
> (2) By appeal, where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.
>
> (3) By Writ of Certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or

where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under the United States.

And in accordance with the provisions of Rule 17 of the Rules of the Supreme Court of the United States.

Considerations Governing Review On Certiorari

1. A review on Writ of Certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a Federal Court of Appeals has rendered a decision in conflict with the decision of another Federal Court of Appeals on the same matter; or has decided a federal question in a way in conflict with a State Court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower Court, as to call for an exercise of this Court's power of supervision.

(b) When a State Court of last resort has decided a federal question in a way in conflict with the decision of another State Court of last resort or of a Federal Court of Appeals.

(c) When a State Court or a Federal Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a

way in conflict with applicable decisions of this Court.

2. The same general considerations outlined above will control in respect of Petitions for Writs of Certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, and of any other Court whose judgments are reviewable by law on Writ of Certiorari.

Because of the conflict between the long standing principles of comity, judicial expendiency and narrow scope of inquiry as defined by the common law prodgeny of Article IV § 2, cl. 2 of the United States Constitution [the extradidition clause] and with the basic and fundamental right of and need for due process, both substantive and procedural, as outlined by the fourteenth amendment to the United States Constitution, where the former precludes a timely and meaningful hearing in the face of obivious and blatant prosecutorial bad faith and abuse of color of law, thus jurisdiction is properly before this Court.

The Circuit Court of the Seventeenth Judicial Circuit of Florida denied Petitioner's Petition for Writ of Habeas Corpus on September 13, 1979. On July 24, 1980 the Fourth District Court of Appeal affirmed the Circuit Court, per curiam. Rehearing was denied on August 27, 1980. Motion to Stay the Mandate pending Petition to the United States Supreme Court for a Writ of Certiorari was denied on October 29, 1980.

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. Article IV Section 2, clause 2 of the United States Constitution, reads as follows:

> "Fugitives. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

2. Fourteenth Amendment to the United States Constitutions reads as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

On October 23, 1978, in Columbus, Ohio, the Plaintiff plead guilty to violation of Ohio Revised Code, Section 2913.11 (passing bad checks), a first degree misdemeanor. The Plaintiff was sentenced to serve six months in jail and pay a fine of ONE THOUSAND DOLLARS ($1,000.00). Time and FIVE HUNDRED DOLLARS ($500.00) were suspended provided restitution would be made. Pursuant to a plea agreement with the Franklin County, Ohio Prosecutor's Office, the Petitioner was to redeem all "re turned" checks as they were turned over by the Prosecutor's Office or by creditors upon the Prosecutor Office's direction. A trust fund was established for that purpose with an initial deposit of more than Seventeen Thousand Dollars ($17,000.00). The Plaintiff was prepared to redeem all checks turned over by the Prosecutor's Office and made twenty-seven additional payments totaling Twenty-

Two Thousand Four Hundred Forty Dollars ($22,440.00) to achieve that end. However, due to various Court actions, and sequestration, the Petitioner did not have access to his books and records and many of his bank accounts were under attachment. As a result, the Petitioner did not know which checks were outstanding and he had many checks returned even though written when there were sufficient funds in his account.

In light of the plea agreement and, although the Prosecutor's office was aware of the Petitioner's recordkeeping problems and payments to the trust fund, the Franklin County Prosecutor filed new charges against the Petitioner for passing bad checks. An indictment against the Petitioner was returned on March 30, 1979 and Petitioner was arrested at his place of business in Fort Lauderdale, Florida, the same day.

At a bond hearing held in Florida on March 31, 1979, Ohio authorities requested a One Hundred Thousand Dollar ($100,000.00) bond. The magistrate, finding that amount excessive, set bail at Fifty Thousand Dollars ($50,000.00). The Petitioner regained his freedom when his mother posted Fifty Thousand Dollars ($50,000.00) to cover the bond. Private collection attorneys from Ohio, whom Petitioner believes and sought to prove were acting in concert with the Franklin County Prosecutor, immediately obtained a Writ of Fieri Facias to attach the money posted as bond. The attachment was sought even though such action was impermissible under Florida law. See *Young v. Stoutamire,* 131 Fla. 535, 179 So. 797 (Fla. 1938). District Judge Jose Gonzalez, Jr. of the United States District Court for the Southern District of Florida quashed said Writ of Fieri Facias on May 31, 1979, Case

number 79-6196-CIV-JAG.

The Franklin County Prosecutor then sought to have the Petitioner extradited, on April 3, 1979. The prosecuting attorney for Franklin County requested the Governor of Ohio to issue a requisition upon the Governor of Florida to extradite Petitioner. The request for interstate rendition was made on April 9, 1979, without any hearing or review of Prosecutor's request by the Ohio Governor.

In a Petition to the Governor of Florida dated June 27, 1979, Petitioner alleged that the Ohio Prosecutor was seeking his extradition, in conjunction with private attorneys, in an effort to collect private debts and that he was motivated purely by political gain and that said extradition request was in contravention to a previous plea agreement. The Petition outlining the facts Petitioner sought to prove as evidence of prosecutorial bad faith has been filed with the District Court of Appeal as an attachment to a Motion to Stay the Mandate but the Trial Court below would not consider said arguments thus the Petitioner was prevented from building a good record below. (Record of the Trial Court at pages 20 through 23 and page 30). The Governor of Florida, however, was not required under Florida law to provide an adversary hearing to the Petitioner on the issue of prosecutorial bad faith prior to granting the request for rendition. Nor was the governor, as a matter of law, required to submit the issue to an administrative or investigative agency or committee, to provide the Petitioner the opportunity to appear, argue his case, confront and cross-examine or call witnesses. Consequently, the request for extradition was granted on July 18, 1979, without due process hearing in which the Petitioner's counsel could raise the issue of prosecutorial

bad faith. The Governor of Florida granted the request for extradition without comment.

The Petitioner, thereafter, sought to challenge the Governor's decision in a Writ of Habeas Corpus filed in the Circuit Court of Broward County, Florida before the Honorable Judge Eugene S. Garrett, on August 9, 1979.

The Petitioner believes and sought to prove that the Prosecutor's decision to seek extradition was made in bad faith, and in contravention to a plea agreement. As indicated, there was evidence that the Prosecutor knew that the Petitioner did not intend to dishonor the checks that were the subject of the March 30, 1979 indictment and therefore that the Petitioner was not guilty of the crimes charged. The Petitioner further sought to show that the Prosecutor requested the Petitioner's extradition to allay criticism of his office. An article in a local Ohio newspaper indicated that the Prosecutor, George Smith, had been the subject of much criticism for his handling of the Firestone case. Smith's aides were quoted as saying that Smith was "tired of getting kicked around by Firestone" and that Smith "seized upon the opportunity to Prosecute Firestone." An article in a national magazine also accused Prosecutor Smith of using his office for political gain. Finally, the Petitioner wanted to present evidence showing that the Prosecutor abused the criminal process by conspiring with private attorneys to help them collect on civil debts. The Prosecutor on a prior occasion had submitted checks to the Petitioner for redemption that had been previously paid. Notice of all pleadings filed by the private attorneys who attached the Petitioner's bond were sent and addressed to Prosecutor Smith. More significantly, attached to the pleadings of those private attorneys were

nineteen checks from various Firestone accounts. Those checks, along with most of the Petitioner's other business records, had been sequestered by the Prosecutor's Office at the direction of the Court and had not even been available to the Petitioner absent a Court order. The Trial Court, however, at the hearing held on September 13, 1979, refused to acknowledge the Petitioner's repeated attempts to present such evidence. The Circuit Court refused to extend the scope of inquiry to consider evidence of blatant and obivious prosecutorial harrassment and bad faith. The Trial Court would not grapple with the need to reconcile the long standing principles of comity, judicial expediency and narrow scope of inquiry as exists in the common law prodgeny of the extradition clause of the United States Constitution and the basic and fundamental right of and need for due process as outlined by the Fourteenth amendment of the United States Constitution.

> MR. DONATO:* Of course. And I am well aware of the fact, your Honor; but what I am saying is, how can a perso be charged with a crime when they have already been brought to justice on it? What I am talking about is due process of law.
>
> MR. RILEY:** Again, I am going to object, We are going into the same thing that you sustained my objection on.
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> THE COURT: Sustained.

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*Attorney Richard T. Donato, of ENGLAND & DONATO, Attorneys for the Petitioner, Davie, Florida.

**Attorney Michael Riley, Assistant State Attorney for the State of Florida in and for the Seventeenth Judicial Circuit, Broward County, Florida.

MR. DONATO: In any event, Your Honor, I do believe that the Defendant is entitled to due process of law and I do not think anybody would disagree with that, and I do not want to get into the motivation of the Prosecutor and I do not want to get into the guilt or innocence, because I realize that they are clearly beyond the scope, although I would like to, because I think they would be very illuminating to this Court.

However, Your Honor, I think that there are fundamental guarantees of due process which are absolute and I will submit a memorandum to the Court on due process.

I realize what I am trying to get into is beyond the scope of this Court's inquiry; but, Your Honor, in this set of circumstances, I think it is essential in order to --

MR. RILEY: Judge, I'm going to object, in all due respect to counsel.

He has prefaced it with saying, "I understand it is beyond the scope." I have a feeling what he is going to say is beyond the scope.

THE COURT: He has not said anything. So, so long as he just --

MR. RILEY: But any testimony as to motivation, fugitive, those things --

MR. DONATO: I will stay away from that, Your Honor, unless you give me a green light.

THE COURT: I have already ruled.

MR. DONATO: Well, Your Honor, I think due process of law, if I may quote Daniel Webster, is a law

which hears before it condemns, which proceeds upon inquiry and which renders judgment only after trial, *Dartmouth College v. Woodward,* 4 Wheat (U.S.) 518.

Your Honor, I am trying to get beyond the scope of inquiry today, but if the facts underlying this entire episode were known to the Court, I do not think the Court would tolerate the conduct of --

MR. RILEY: Objection.

MR. DONATO: -- certain public officials.

MR. RILEY: Objection, Your Honor.

THE COURT: Sustained.

MR. DONATO: Would Your Honor entertain a memorandum of law on the fact that due process is an ever changing, growing, thriving concept which is, although not acceptable to close definition, does allow a bending of a rule and allow in order to encompass changing times and special circumstances?

THE COURT: If I am unable to make a decision this date, I will certainly have you file a memorandum of law, if I deem it to be appropriate.

MR. DONATO: The memorandum of law regarding due process, I would like to make a part of the record, even if the Court is inclined not to entertain my argument on due process. .

THE COURT: As soon as you are finished, I will read them and then make them part of the record. Go ahead.

MR. DONATO: All right, Your Honor. I feel that

> the due process aspect is very important, but I will not defy this Court; but I would like if the Court is so inclined to read them and let him base his decision on that and, really, all I am asking is not necessarily for you to rule in contravention of what is a permissible scope here, I am merely asking you to hear Petitioner's argument and contentions and if you think them unjustified, stick to the letter of the law saying that your inquiry is very, very narrow; but if you find that there is a manifest injustice being committed here, then I would ask you to deviate, although I realize that is a tremendous burden that I am asking, a request I am making of a Trial Court, possible it is more appropriate at some other level, but I think that the Court has that inherent power and thank you, Your Honor. I pray that the Court deny extradition and grant our Writ of Habeas Corpus.

The Circuit Court thereafter denied the Writ of Habeas Corpus on September 13, 1979.

Petitioner immediately appealed Judge Garrett's decision to the District Court of Appeal, Fourth District of Florida. Petitioner argued that Judge Garrett incorrectly concluded that Petitioner was barred from presenting evidence of the Ohio Prosecutor's bad faith. On July 24, 1980, the Court of Appeal, rejecting Petitioner's due process argument, entered a per curiam affirmance of the Circuit Court's decision. Petitioner's Motion for Rehearing was denied as was his Petition for a Stay Pending Filing of a Petition for Certiorari before this Court.

Since a recent constitutional amendment limits an Appellant's right to appeal to the Florida Supreme Court

when a District Court of Appeal has issued a per curiam affirmance Petitioner has exhausted all available state remedies. The District Court of Appeal denied Petitioner's request that the Mandate be stayed until this Court could exercise its certiorari review. Whereupon, the Petitioner has or will file contemporaneous with this Writ of Certiorari a Motion to Stay the Mandate, pending review of this Motion.

ARGUMENT

The Petitioner raises an issue of extraordinary constitutional importance concerning the relationship between Article IV § 2, cl. 2, of the United States Constitution [the extradition Clause] and the due process clause of the Fourteenth Amendment. In the leading case of *Michigan v. Doran,* 439 U.S. 282 (1978), this Court found that the Fourth Amendment did not require a probable cause hearing prior to extradition once the Governor of an asylum state had approved a request for extradition based upon a demanding state's judicial determination that probable cause existed. *Doran,* however, did not address a significant issue which remains undecided by this Court: does the Due Process Clause entitle an individual subject to a request for extradition to a meaningful hearing on the issue of prosecutorial bad faith prior to permitting the loss of liberty occasioned by extradition, where the issue is nonfrivolously raised? This issue is of vital concern to this Court in that it squarely poses two, possibly contrary, lines of judicial precedent which this Court has left unresolved. On the one hand, this Court has consistently and unconditionally maintained that where bad faith arises in the criminal justice system the usual deference to principles of

comity, (which are fundamental to the extradition process) give way to the more active intervention of the courts. *Perez v. Ledesma,* 401 U.S. 82, 85 (1971); *Younger v. Harris,* 401 U.S. 37, 46-52 (1977); *Dombrowsky v. Pfister,* 380 U.S. 479 (1965). This exception is due in large measure to the idea that "bad faith" strikes at the very foundations of our system of justice and, where present, undermines due process of law. Alternatively, this Court in *Doran* clearly placed a substantial constitutional value on the expeditious treatment of an extradition request to prevent the "balkanization" of the extradition process. Thus the instant case poses, in sharp contrast, the confrontation of constitutional values and comity principles occasioned by a bad faith prosecution. That clash of values is heightened, in the instant case, because the defendant here cannot test the issue of prosecutorial bad faith in the courts of the requesting state as Doran could test probable cause in Arizona.

This Court's resolution of the issue also will have important national consequences as forty-six of our fifty states have adopted statutory schemes identical to the one challenged here. National Association of Extradition Officials, *The Fundamentals of Extradition* (Mar. 26, 1979) pg. 3. Moreover, a decision will serve to provide the judicial guidance needed to clarify the extent and effect of due process considerations on the extradition process.

In *Michigan v. Doran,* 439 U.S. 282 (1978), the Court left, unresolved, two major issues. First, this Court did not address, because it did not have before it, the issue of the relationship and significance of the Due Process Clause of the Fourteenth Amendment to the extradition context. Second, the Court in *Doran* did not resolve the more

general problem of the effect that constitutional protections have on the extradition process.

More importantly, the Court's holding in *Doran* left open the question raised in the instant case. The lower court apparently relied on *Doran* to conclude that the state's interest in expeditiously bringing the petitioner to trial outweighed the substantial constitutional rights affected by the decision to extradite.

In *Doran,* however, the petitioner claimed a Fourth Amendment right to a hearing on the existence of probable cause. The focus was on the grounds for arrest, not on the decision to extradite. This Court properly concluded that the petitioner's Fourth Amendment interests were protected by the demanding state's judicial determination of probable cause. By contrast, the petitioner, herein, seeks to challenge the decision to extradite (not arrest) wherein no opportunity to be heard, consistent with the Fourteenth Amendment was provided on the issue of prosecutorial bad faith. A grand jury finding of probable cause, as occurred, here, while providing some Fourth Amendment safeguards provides no security against an improper extradition motivated by prosecutorial bad faith.

In this respect, *Doran* leaves a significant question unresolved. In *Doran* no allegations of bad faith were made. The court, therefore, did not have to face the issue, presented here, of whether principles of comity and deference to a requesting state's jurisdiction must give way to the right to a due process hearing when the issue of prosecutorial bad faith is non-frivolously raised. Clearly, a majority of this Court has steadfastly adhered to the principle that where bad faith and harrassment are present, the threat to an individual's liberty requires an independent

hearing, not deference to another forum's judicial process. See *Juidice v. Vail,* 430 U.S. 327, 338 (1977); *Huffman v. Pursue, Ltd.,* 420 U.S. 592, 611 (1975); *Perez v. Ledesma,* 401 U.S. 82, 85 (1971); *Younger v. Harris,* 401 U.S. 37 46-52 (1971); *Dombrowski v. Pfister,* 380 U.S. 479 (1965).

As a clear majority of this Court has already found that bad faith and harrassment provide a fundamental exception to general principles of comity in the relationship between the federal government and the states, the same underlying policy considerations would govern these same principles of comity when deciding whether due process requires an independent hearing on the issue of bad faith.

By definition, the prosecutor's harrassment and bad faith in the instant case will likely lead to repeated prosecutions. This Court has indicated in *Younger* and its progeny that such circumstances justify departing from the general procedure of deferring to a state court's jurisdiction. The same reasoning applies here with even greater force. Not only would the Florida courts be asked to defer to Ohio's jurisdiction if this Court found that the Florida courts could not make an independent inquiry into bad faith, but they would, in effect, be demeaning the integrity of their own state's processes by actively participating in the abuse of process of another state.

The Florida District Court of Appeal erred when it rejected the petitioner's due process challenge and it may have misconstrued *Michigan v. Doran* in doing so. Given the importance of this due process issue, the need to resolve the confrontation of values as expressed in the Due Process Clause, the Extradition Clause and the *Dombrowski - Younger* cases, and the fact that the resolution of this issue has national importance because forty-six of our fifty

states have statutory schemes requiring extradition identical to Florida, this court should define when and in what circumstances an asylum state must consider an overriding need to afford an individual basic due process and depart from the existing narrow scope of inquiry in extradition cases. When prosecutorial conduct becomes so reprehensible a full evidentiary hearing before the appropriate judiciary body of the asylum state is absolutely necessary prior to any depravation of rights, in order to afford one due process of law.

The conduct of the Prosecutor in this particular case is so reprehensible that this particular set of circumstances warrants a deviation from the general rule of law in extradition matters and, if necessary, even a change in the general rule of law. The general rule of law of which I am speaking is the facts underlying, an extradition request and the rule that prohibits an inquiry into anything other than the sufficiency of the papers, identity, whether Petitioner has been substantially charged with a crime, and whether Petitioner was in the demanding state at the time or caused results there. The Petitioner realizes the magnitude of such a request upon this Court but because of the circumstances and because of the irreparable harm involved, it is necessary to make such a request. The basis upon which this Court may rely as authority for a deviation from the general rule of law is due process as outlined by the Constitution. The fundamental guaranty of due process is absolute and not merely relative, *Hammond Packing Co. v. Arkansas,* 212 U.S. 322 (1908). Although, there may be no authority for this precise situation we must be mindful of the fact that due process has as its purpose the incurring of the fair and orderly administration of the

laws, *International Shoe Co. v. Washington,* 326 U.S. 310 (1945), and that due process is a limitation upon arbitrary power and it demands that law or its enforcement shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a real and substantial relationship to the object sought to be attained, *West Coast Hotel Co. v. Parrish,* 300 U.S. 379 (1937), and *Miami Laundry Co. v. Florida Dry Cleaning and Laundry Bd.,* 134 Fla. 1 (1938). Due process is not a precise term. This guaranty receives a very broad and liberal interpretation. *Rochin v. California,* 342 U.S. 165 (1952). The guaranty asserts a fundamental principle of justice, rather than a specific rule of law. *Territory v. Craig Enterprises, Inc.,* 355 P. 2d 397 (1960). In each case, due process requires an evaluation based on a disinterested inquiry and a judgment not ad hoc and episodic but duly mindful of reconciling the needs both of continuity and of a change in a progressive society. *Rochin,* supra.

It is the Petitioner's prayer that this Court remand this cause to the Circuit Court to consider the extreme and outrageous circumstances surrounding this extradition request. As defined by the previously cited cases due process is the mechanism by which Courts may deviate from traditional and long standing general rules of law. Laws well tailored to fit society at the time in which they were espoused do not necessarily meet the needs of a vibrant and ever changing society and therefore must evolve to keep pace with the needs of today's world. Due process is the vehicle of change, it will not allow an arbitrary, cold, and detached application of a hard, fast, and well defined rule of law without considering the inequities of an abusive

application of such a rigid rule of law. Our system of jurisprudence is built upon the corner stones of equity and justice in all cases. Due process allows a deviation from or a modification of a rule of law when justice and fair play require. The History of judicial development has seen the use and creation of legal fictions, the reliance on innocuous distinguishing factors and the bolder deviation from legal precedents. It does not matter to the Petitioner what form the vehicle of justice may take, what matters to the Petitioner is that the basic corner stone of justice will insure that he be accorded, at least, the minimal due process considerations to-wit: THE RIGHT TO BE HEARD. The Petitioner would proffer that this extradition request is in direct contravention of the terms and conditions of his plea agreement and that the prosecutor has used this extradition process in order to aid private attorneys in the collection of a civil debt and that the prosecuting attorney has used this process for political gain and that by affording the Petitioner his day in Court in the demanding state instead of the asylum state would be paramount to no day in Court, in that, the irreparable damage would have already occured. On October 23, 1978, the Petitioner entered into plea bargaining agreement with the Franklin County Prosecutor, whereby the Petitioner gave up his right to defend on the merits and plead guilty to only one misdemeanor count of passing bad checks and agreed to pay all bad checks held by anyone in the United States and set up a funded trust account to redeem said checks, in exchange for the Prosecutor's promise to present the Petitioner with all bad checks, held by anyone in the United States, for payment. Because of this plea agreement, due process of law, both procedural and substantive, prohibits the Prosecutor from obtaining

the current indictments and requesting extradition. Such conduct shocks all traditional notions of fair play and justice. The Supreme Court of the United States in the 1974 case of *Blackledge v. Perry,* 417 U.S. 21 (1974), discussed the constitutional violation of vindictive conduct on the part of a Prosecutor and agreed that "the imposition of a penalty upon a Defendant for having successfully pursued a . . . . collateral remedy would be a violation of due process of law." Although not on point, this extradition request is vindictive conduct on the part of the Prosecutor for Petitioner having pursued a collateral remedy.

Due process is so deeply embedded in our system of jurisprudence that this Court has the inherant power to at least consider the extreme and outrageous circumstances and irregularities behind this extradition request and determine if fundamental due process has been denied the Petitioner, and consequently depart from existing precedent. In the words of Daniel Webster in the Dartmouth College case, due process of law means "a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial." *Dartmouth College v. Woodward,* 4 Wheat (U.S.) 518 (1819).

the indictment.

MR. DONATO: Thank you, Your Honor.

THE COURT: I'm going to file the memorandum of law without comment, as the Court has ruled that that is not before the Court, the memorandum of law in support of the insufficiency of the indictment is filed for consideration.

Having considered the papers before the Court, the Court is cognizant of the burden upon the Petitioner to establish that the burden which he seeks is, in fact, so.

Stating State of Florida v. DeVine at 342 So2d 103, a District Court of Appeals case, 1977, the authority of the judge and trial court in a Habeas Corpus proceeding contesting extradition is limited to determining what the crime has been charged in the demanding state, whether the fugitive in custody is the person charged and the fugitive was in the demanding state at the time alleging the alleged crime when this case - crime was committed. That the Court having an opportunity to view what is now State's Exhibit Number One in Evidence and the sole issue before the Court as to whether the crimes charged in extradition papers are, in fact, a crime in the state of Ohio, the Court concludes that the Petitioner has failed to carry its burden and the Court finds that the Court is not convinced that the crime charged in the Information is not a crime in the state of Ohio and for that reason, the Court hereby denies the Writ of Habeas Corpus.

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT

(EXHIBIT B)

DANIEL L. FIRESTONE,

Appellant,

v. CASE NO. 79-2014

STATE OF FLORIDA,

Appellee.

July 24, 1980

BY ORDER OF THE COURT:

ORDERED that the Mandate of this Court dated July 11, 1980, is withdrawn for the reason recited below; and it is further,

ORDERED that the decision of this Court, dated June 18, 1980, is withdrawn upon the ground that a copy thereof was not received by appellant; and it is further,

ORDERED that a decision affirming per curiam shall be issued by the Clerk this date.

I hereby certify the foregoing is a
true copy of the original court order.

CLYDE L. HEATH,
CLERK

cc: Richard T. Donato, Attorney
Attorney General
Honorable Robert E. Lockwood, Clerk (79-14579)
cms

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT

(EXHIBIT C)

DANIEL L. FIRESTONE,

Appellant,

v. CASE NO. 79-2014

STATE OF FLORIDA,

Appellee.

August 27, 1980

BY ORDER OF THE COURT:

ORDERED that the Motion for Rehearing filed by Appellant on August 4, 1980 is hereby denied.

I hereby certify the foregoing is a
true copy of the original court order.

CLYDE L. HEATH,
CLERK

cc: Richard T. Donato, Attorney
Attorney General

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IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT

(EXHIBIT D)

DANIEL L. FIRESTONE,

Appellant,

v. CASE NO. 79-2014

STATE OF FLORIDA,

Appellee.

October 29, 1980

BY ORDER OF THE COURT:

ORDERED that Appellant's September 9, 1980 Motion to Stay the issuance of mandate is hereby denied.

I hereby certify the foregoing is a
true copy of the original court order.

CLYDE L. HEATH,
CLERK

cc: England & Donato
Attorney General
Kurzban and Kurzban, P.A.
Joseph Beeler, P.A.

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